

LAW OFFICES OF BING LI, LLC
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New York, NY 10018-0947
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Korean Produce Buying Service Inc.
bli@blillc.com

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New York, NY 10016
(212) 447-1600
Co-counsel for Plaintiff

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
KOREAN PRODUCE BUYING SERVICE INC.,
t/a K.P.T.,

Case No.:

Plaintiff,

-against-

CHA BROTHERS, MYUNG JONG CHA and
HAE JA CHA, individually and/or doing business
as Cha Brothers,

Defendants.
-----X

**DECLARATION OF YONG H. KIM
IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER AND
AN ORDER OF PRELIMINARY INJUNCTION**

YONG H. KIM, declares under penalty of perjury as follows:

1. I am the president of KOREAN PRODUCE BUYING SERVICE INC. t/a K.P.T., the plaintiff in the above-captioned action and makes this Declaration in support of plaintiffs application for a temporary restraining order and an order of

preliminary injunction upon the return date of the action. As such, I am personally familiar with the facts and circumstances set forth herein.

2. Plaintiff is a New York corporation engaged in the business of buying and selling wholesale quantities of perishable agricultural commodities in interstate commerce. Plaintiff commences this action to enforce the trust provisions of P.L. 98273, the 1984 Amendment to Section 5 of the PACA, 7 U.S.C. § 499e(c) in the trust amount of \$90,261.01 as of November 2, 2007, together with interest and attorney's fees recoverable under the PACA.

3. Defendants MYUNG JONG CHA ("M. Cha") and HAE JA CHA ("H. Cha"), individually and/or doing business as Cha Brothers, are produce "retailers" defined by 7 U.S.C. § 499a and are subject to the PACA.

4. Defendant M. Cha and H. Cha were responsible for the day-to-day operations of their retail business, Cha Brothers, and were in control over the PACA trust assets belonging to plaintiff.

5. The sales and accounts receivable records of K.P.T., including invoices and account statements, are made in the ordinary course of business and are made at or near the time of the occurrence of the event of which they are recorded. These business records are made by me or under my direction and supervision by the employees of K.P.T.

6. In the years of 2006 and 2007, Plaintiff sold and delivered to defendants, in interstate commerce, perishable agricultural products, within the meaning of the PACA, 7 U.S.C. § 499a.

7. At the time of receipt of the produce by defendants, plaintiff became a beneficiary in a statutory trust (the "PACA Trust") designated to assure payment to produce suppliers. The trust consists of all produce or produce-related assets, including all funds commingled with funds commingled with funds from other sources and all assets procured by such funds, in the possession or control of defendants since the creation of the trust.

8. Plaintiff preserved its interest in the PACA Trust by providing notice to defendants of its intent to preserve the trust in its original and usual billing or invoices statements for the produce sold and delivered to defendants.

9. Despite the requirement and liability created by the PACA Trust, defendants had failed to pay for the produce when payment was due and owe plaintiff the total amount of \$90,261.01 as of November 2, 2007. A true copy of plaintiffs billing statement dated November 2, 2007 is annexed hereto as **Exhibit A**.

10. Defendants had frequently issued checks to plaintiffs in payment for plaintiffs produce while knowing that they did not have sufficient funds in their account. Between August 2006 and August 2007, defendants issued at least eight (8) checks for a combined amount of \$35,861.50 that were all dishonored for insufficient funds. True copies of these dishonored checks are annexed hereto as **Exhibit B**.

11. Defendants have not disputed the debt in any way and have repeatedly promised to pay but have not done do.

12. Defendants' failure, inability and refusal to pay the amount of \$90,261.01 show that defendants have failed to maintain sufficient assets in the statutory trust to pay plaintiffs and are dissipating trust assets.

13. Unless the assets of the defendants are frozen, it is likely that the trust assets will continue to be dissipated and depleted. As a result, plaintiff will suffer immediate and irreparable harm because it will lose the trust assets and rights that are owed under the PACA law.

14. No provisional remedy has been secured or sought in this action and no prior application has been made for the same or similar relief as is sought herein.

15. I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on March 10, 2008
New York, New York.



YONG H. KIM

EXHIBIT A

Statement

From 07/30/2007 - To 08/03/2007

Korean Produce Buying Service Inc.

237-A New York City Terminal Market

Bronx, NY 10474

Tel 718)617-1899 Fax 718)617-6734

Customer CHA Brother;s #1 / 7WP
 4376 Whiteplains Rd
 Bronx, NY 10466
 Tel 718/994-8524

Week Transaction

(A FINANCE CHARGE OF 1-1/2% PER MONTH(18ANNUAL PERCENT RATE) WILL BE ADDED TO ALL BALANCES ORVER 30DAYS OLD)

	Monday	Tuesday	Wednesday	Thursday	Friday	Delivery	Total
Date	07/30/2007	07/31/2007	08/01/2007	08/02/2007	08/03/2007		
Sale Amount	\$1,037.00	\$614.50	\$220.00	\$879.00	\$666.50	\$300.00	\$3,717.00
Inv No.	118336	118367	118424	118459	118506		
Payment					\$4,500.00		\$4,500.00
Credit				\$-20.00			\$-20.00
						Week Balance	\$-803.00

Last week Balance	This week Transaction	New Balance
\$88,236.51	\$-803.00	\$87,433.51

Date	+/-	Item	Qty	Price	Amount
08/02/2007	-	MIX PEPPER	2	-10.00	-20.00

**IN ACCORDANCE WITH THE PACA TRUST, PAYMENT
 IS DUE UPON RECEIPT OF INVOICE AND FAST
 DUE 10 DAYS FROM DATE OF ACCEPTANCE.**

Received Amount	
Received By	
Paid By	

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5C of the Perishable Agricultural Commodities Act, 1930(7 U S C 499 e(c)). The seller of these commodities retains a trust claim over these commodities all inventories, food or other products derived from these commodities, and any receivables proceeds from the sale of these commodities until full payment is received. Interest and attorneys fees necessary to collect any balance due hereunder shall be considered owing in connection with this transaction.

Statement**Korean Produce Buying Service Inc.**

237-A New York City Terminal Market

Bronx, NY 10474

Tel 718)617-1899 Fax 718)617-6734

Customer CHA Brother;s #1 / FWP

4376 Whiteplains Rd

Bronx, NY 10466

Tel 718/994-8524

Week Transaction

(A FINANCE CHARGE OF 1-1/2% PER MONTH(18ANNUAL PERCENT RATE) WILL BE ADDED TO ALL BALANCES ORVER 30DAYS OLD)

	Monday	Tuesday	Wednesday	Thursday	Friday	Delivery	Total
Date	10/29/2007	10/30/2007	10/31/2007	11/01/2007	11/02/2007		
Sale Amount							
Inv No.							
Payment							
Credit							
						Week Balance	

Last week Balance	This week Transaction	New Balance
\$90,261.01		\$90,261.01

Date	+/-	Item	Qty	Price	Amount
10/28/2007		No Credit			

**IN ACCORDANCE WITH THE PACA TRUST, PAYMENT
IS DUE UPON RECEIPT OF INVOICE AND FAST
DUE 10 DAYS FROM DATE OF ACCEPTANCE.**

Received Amount	
Received By	
Paid By	

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5C of the Perishable Agricultural Commodities Act, 1930(7 U S C 499 e(c)). The seller of these commodities retains a trust claim over these commodities all inventories, food or other products derived from these commodities, and any receivables proceeds from the sale of these commodities until full payment is received. Interest and attorneys fees necessary to collect any balance due hereunder shall be considered owing in connection with this transaction.

EXHIBIT B

CHA BROTHERS
4376 White Plains Rd
Bronx, NY 10466-1413

3210

1-108/210

8/10/07

DATE

PAY TO THE ORDER OF K. P. T. \$ 4500.00

Forty five hundred DOLLARS

HSBC

HSBC Bank USA, N.A. Bronx, NY 10466

FOR 8/27/07 - 29/07 MP

⑆021001088⑆988723689⑆ 3210 ⑆0000450000⑆

NSF2X

Security Features Details on Back

5 HARLAND 2004

016723333

AUG 17 08
AUG 19 07

HSBC RETURNS
08/13/2008 13:38:07 500000 RETURNS
HSBC RETURNS 08/13/07

TO THE ORDER OF
KOREAN PRODUCE
0033 2344

0079
KOREAN PRODUCE
0033 2344

CHA BROTHERS
4376 White Plains Rd
Bronx, NY 10466-1413

4020

8/02/07

DATE

3202

1-108/210

PAY TO THE ORDER OF K. P. T.

\$ 38,111.50

Thirty eight thousand eleven 50/100

HSBC

HSBC Bank USA, N.A. Bronx, NY 10466

FOR # 7/16 ~ 22/07

10210010881988723689 3202

0000381150

Security Features Back

983755299

AUG - 3 08

HSBC RETURNS
08/06/2008 08/07/07D

40387091

10210010881

HSBC BANK USA, N.A.
BROOKLYN, NY 08/03/07

400046570

PAY TO THE ORDER OF
KOREAN PRODUCE
INC.

CHA BROTHERS
4376 White Plains Rd.
Bronx, NY 10466-1413

4021


3240

1-108/210

DATE 6/06/09

PAY TO THE ORDER OF K. P. T. \$ 5,100.00 ^{XX}

Five thousand one hundred DOLLARS

HSBC 

HSBC Bank USA, N.A. Bronx, NY 10466

FOR 5/21/09 Chief MP

⑆021001088⑆988723689⑆ 3240 ⑆0000510000⑆

© HARLAND 2004

HSBC RETURNS

06/08/2007 33088941088410 RETURNS



06/11/07D

⑆021001088⑆

HSBC BANK USA, N.A.
BROOKLYN, NY 06/07/07



4100427573

PAY TO THE ORDER OF
HSBC BANK USA, N.A.
KOREAN PRODUCE CO.
5037 Ave. N
Suite 111
Ft. Lauderdale, FL 33309

CHA BROTHERS 4376 White Plains Rd Bronx, NY 10466-1413		3429
		1-108/210
DATE <u>9/09/06</u>		
PAY TO THE ORDER OF <u>K. P. T.</u>	\$ <u>4250.00</u>	
<u>Fourty two hundred fifty</u>		DOLLARS
HSBC 		
HSBC Bank USA, N.A. Bronx, NY 10466		
FOR <u># market</u>	 MP	
⑆021001088⑆988723689⑆ 3429		



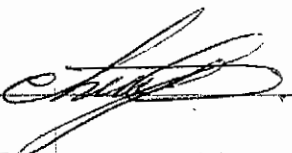
© HARLAND 2004

RETURN TO PRONICE

CHA BROTHERS 4376 White Plains Rd Bronx, NY 10466-1413		3422 1-108/210	
		<u>8/26/06</u> DATE	
PAY TO THE ORDER OF <u>K. P. T.</u>		\$ <u>4500</u> ⁰⁰ / ₁₀₀	
<u>Fourty five hundred and 00/100</u>		DOLLARS  Security Features Details on Back	
HSBC 			
HSBC Bank USA, N.A. Bronx, NY 10466			
FOR <u>Market</u>		<u>[Signature]</u> MP	
⑆021001088⑆988723689⑆ 3422			

© HARLAND 2004

KOREAN PRODUCE

CHA BROTHERS 4376 White Plains Rd Bronx, NY 10466-1413		3427 1-108/210	
		DATE <u>8/29/06</u>	
PAY TO THE ORDER OF <u>K. P. T.</u>		\$ <u>4,300.00</u>	
<u>Fourty three hundred and</u>		DOLLARS  Security Features Details on Back	
HSBC 			
HSBC Bank USA, N.A. Bronx, NY 10466			
FOR <u>Market</u>		 MP	
⑆021001088⑆988723689⑆ 3427			

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KOREAN PRODUCE

CHA BROTHERS
4376 White Plains Rd
Bronx, NY 10466-1413

3634

1-108/210

8/12/06 DATE

PAY TO THE ORDER OF K. P. T. \$ 5,200.00

Fifty two hundred DOLLARS

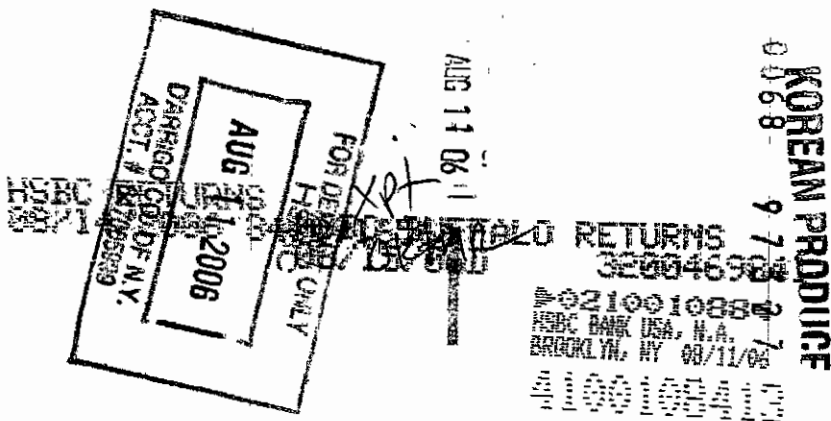
HSBC
HSBC Bank USA, N.A. Bronx, NY 10466




FOR MP

⑆021001088⑆988723689⑆ 3634 ⑆0000520000⑆

Security Features Details on back

© HARLAND 2004



CHA BROTHERS 4376 White Plains Rd Bronx, NY 10466-1413		3402	
		1-109/210	
DATE <u>8/25/06</u>		DATE	
PAY TO THE ORDER OF <u>K. P. T.</u>		\$ <u>4200</u> ^{xx} / ₁₀₀	
<u>Forty two hundred and</u>		DOLLARS 	
HSBC 			
HSBC Bank USA, N.A. Bronx, NY 10466			
FOR <u>MasterCard</u> 		<u>MP</u>	
⑆021001088⑆488723689⑆ 3402		⑆0000420000⑆	

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